IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 52

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, et al.,

On Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF AMICUS CURIAE IN SUPPORT OF APPELLANTS BENJAMIN E. SMITH AND BRUCE WALTZER

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF APPELLANTS BENJAMIN E. SMITH AND BRUCE WALTZER

The National Lawyers Guild moves for leave to file the attached Brief Amicus Curiae. The interest of the Guild in the case is set forth in the brief. Pursuant to Rule 42 of the Rules of this Court, the Guild requested the consent of the parties to the filing of the brief amicus. Consent has been received from the attorneys for the appellants but no consent has been received from the attorneys for the appellees.

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DAVID REIN
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National Lawyers Guild

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BRIEF OF NATIONAL LAWYERS GUILD AMICUS CURIAE IN SUPPORT OF APPELLANTS BENJAMIN E. SMITH AND BRUCE WALTZER

INTEREST OF THE NATIONAL LAWYERS GUILD

The National Lawyers Guild is a national bar association which throughout its history has supported the independence of the bar, the fair administration of justice and the preservation of civil liberties for all. It was the first national bar association that admitted all members of the bar without regard to race, creed or color. It also actively engages in the legal arena for elimination of discrimination and segregation in all forms.

Appellants are active practitioners in the State of Louisiana who have had a foremost role in the prose-

cution of civil rights cases in their State. They were arrested while attending the first interracial conference of lawyers in the city of New Orleans in recent history, a conference held under the auspices of the National Lawyers Guild as part of its program to break down discriminatory bars in the legal profession and elsewhere. Appellants were subsequently indicted on the ground that their membership in the Guild constituted a crime under the laws of the State of Louisiana. Since appellants are under attack because they have espoused the Guild principles of non-discrimination and freedom for all, and because of their Guild membership, it is more than appropriate for the Guild to submit its views as *amicus curiae* in their case.

ARGUMENT

The appellants have been indicted, and their reputations and professional careers prejudiced, because of their role in attempting to translate into living reality this Court's decisions as to the meaning of the 14th Amendment as a barrier to racial discrimination and segregation. In a period when the bar as a whole has failed to fulfill its responsibilities in this area, appellants, who are among the handful of white lawyers in the south who are discharging this duty find themselves, as a consequence, the targets of state vengeance. No more than as with the State of Virginia should this Court "close [its] eyes to the fact that the militant Negro civil rights movement has engendered the intense resentment and opposition of the politically dominant white community"[1] in the State of Louisiana. To say that under these circumstances, appellants cannot seek relief in the federal courts to enjoin these unconstitutional reprisals is to advocate federal ir-

[1] *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 435.

responsibility. The abstention of the majority below in deference to state authority is especially misplaced in the present case. The federal-state conflict arises here not because of any interference by the federal courts with a proper state function, but solely because of the refusal of the state authorities to recognize the supremacy of the federal Constitution. The federal court system would be defaulting in this contest if it failed to come to the protection of those citizens who argue in opposition to the state authorities that the federal constitution is supreme and who are faced with reprisal by state authorities because of their advocacy of those views.

As the dissenting opinion so clearly shows, the whole rationale for independent federal courts and the Civil Rights Act which gave them jurisdiction is to prevent state action of the kind challenged here. In short it is imperative that the federal courts give relief in cases of this kind not only for the protection of appellants but for the preservation of the federal system itself.

All of the precedents in this Court indicate not only the presence of but the need for the federal courts to take jurisdiction. Despite the so-called general rule that federal courts will not enjoin a state criminal prosecution, this Court has never hesitated in enjoining a criminal prosecution involving a clear violation of federal constitutional rights, *Hague* v. *C.I.O.*, 307 U.S. 496; *Evers* v. *Dwyer*, 358 U.S. 202; *Gayle* v. *Browder*, 352 U.S. 903, aff'g 142 F. Supp. 707.

No serious argument can be presented that the Louisiana statute challenged by appellants is constitutional either on its face or as applied. Because of the breadth of the statute and its impact on the rights of speech, assembly and association, the statute is a gross

invasion of First Amendment rights, *Thornhill* v. *State of Alabama*, 310 U.S. 88; *Thomas* v. *Collins*, 323 U.S. 516; *Herndon* v. *Lowry*, 301 U.S. 242; *Cramp* v. *Board of Public Instruction*, 368 U.S. 278; *Wright* v. *Georgia*, 373 U.S. 284; *Shelton* v. *Tucker*, 364 U.S. 479. Because of its reliance on an ex parte listing of organizations by the House Committee on Un-American Activities, it constitutes a bill of attainder, *Cummings* v. *Missouri*, 4 Wall. 277; *Garner* v. *Board of Public Works*, 341 U.S. 716, 722; *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 127, 143 (concurring opinion); *Barsky* v. *Board of Regents*, 347 U.S. 442, 459 (dissenting opinion); and a denial of procedural due process, *Joint Anti-Fascist Refugee Committee* v. *McGrath*, *supra*; *United States* v. *Lovett*, 328 U.S. 313, 317; *Nostrand* v. *Balmer*, 53 Wash. (2d) 460, 471-2, 335 P. 2d 10, 16-17. The registration requirement violates the privilege against self-incrimination, *Blau* v. *United States*, 340 U.S. 159; *People* v. *McCormick*, 228 P. 2d 349; and the entire statute involves a field which has been preempted by the federal government, *Pennsylvania* v. *Nelson*, 350 U.S. 497; *Hines* v. *Davidowitz*, 312 U.S. 52.

Moreover, the complaint alleged and the appellants offered to prove that the statute was being applied to them in an unconstitutional fashion and solely because of their opposition to the official segregation policy of the State of Louisiana. There is no question that the appellants were entitled to introduce such evidence, and, if the facts supported their allegations, were entitled to relief. *Prentis* v. *Atlantic Coast Line Co.*, 211 U.S. 210; *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449; *Bates* v. *Little Rock*, 361 U.S. 516; *Louisiana* v. *N.A.A.C.P.*, 366 U.S. 293; *N.A.A.C.P.* v. *Button*, 371 U.S. 415.

The majority's grounds for denying appellants the opportunity to offer such evidence has no precedent in this or any other court and are plainly irrational. So far as we have been able to determine, the argument that appellants must be denied their day in court because at such hearing appellees would also be entitled to introduce evidence, is original with the majority below, and we trust it will find no endorsers in other jurisdictions. The further objection that a public hearing in a United States Federal District Court would be a "Star Chamber proceeding with all the 'folderol' and publicity attendant therewith" is as frivolous as it is unintelligible.[2]

Equally without merit is the majority's conclusion that appellants may be unconstitutionally persecuted because "here the very vitals of our constitutional system of government are on the line." What is "on the line" is the effort of the State of Louisiana to preserve its unconstitutional system of white supremacy in defiance of this Court's opinions. As Judge Wisdom's dissenting opinion put it, "the Louisiana legislature regards the movement to increase Negro voting in the State as part of the Communist conspiracy." And the growing effort to equate Negro

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[2] The court may have been legitimately concerned with the extravagant character of some of the defendants in this action. Thus according to paragraph 15 of appellants' offer of proof the defendants who conducted the unlawful raid on appellants' homes and offices were quoted as not informing the FBI of this raid because "We knew that if we told the FBI about this raid, they would have to tell Bobby Kennedy. We cannot trust him and we expect him to tell his friend, Martin Luther King." However, legitimate may have been the concern to protect the public reputation of Louisiana state officials, it is not sufficient ground to deny appellants' relief. On the contrary, it only serves to demonstrate that appellants can only obtain relief in a federal tribunal.

protest with Communism is only one aspect of the southern states' technique of nullifying federal court decisions in the area of civil rights, see Lusky, *Racial Discrimination and the Federal Law: A Problem in Nullification*, 63 Columbia L. Rev. 1163, 1173-4.

Because of its flagrantly unconstitutional nature, we have no doubt as to the eventual fate of this effort of the State of Louisiana to harass and persecute appellants. But the prospect that appellants can, after prosecution and conviction in the Louisiana courts, eventually come to this Court for relief to strike down this unconstitutional action, is hardly an adequate remedy. Since appellants are practicing attorneys in the State of Louisiana, the harm that would be done to them, their reputations and their practice of law in the intervening years would be irreparable. Appellants are being victimized because they are, in the hostile climate of the State of Louisiana, staunch supporters of the principles enunciated by this Court. They deserve more than the promise of future vindication in this Court in the years to come.

The judgment below should be reversed with directions to grant the relief prayed for in the complaint.

Respectfully submitted,

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